

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 9370 of 1997****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the Civil Judge?

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A'BAD MUNICIPAL SHIKSHAK PENSIONER MANDAL - Petitioner(s)
Versus
ADMINISTRATIVE OFFICER & 3 - Respondent(s)

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Appearance :

MR KB PUJARA for Petitioner(s) : 1,
MR AD OZA for Respondent(s) : 1,
MR MG NAGARKAR for Respondent(s) : 2,
GOVERNMENT PLEADER for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 26/04/2007****ORAL JUDGMENT**

1. Present Special Civil Application has been filed under Article 226 of the Constitution of India

by the petitioners-Ahmedabad Municipal Shikshak Pensioner Mandal - an Association of the retired Primary School Teachers of the Ahmedabad Municipal Board for and on behalf of the retired Primary School Teachers of the Ahmedabad Municipal Board who have retired between 01.06.1987 and 31.07.1994, for an appropriate Writ, Direction and/or Order directing the respondents more particularly respondent No.1 - Administrative Officer of the Municipal School Board, Ahmedabad Municipal Corporation to complete the exercise of revision of pay and pension of retired primary teachers of the Ahmedabad Municipal School Board who have retired between 01.06.1987 to 31.07.1994 as per Government Resolution dated 05.07.1991 as expeditiously as possible. It is also further prayed for an appropriate direction directing respondent no.1 to make payment of arrears of difference of salaries and pensionary benefits pursuant to the revision of pay and pension as per GR dated 05.07.1991.

2. At the outset it is required to be noted that at the relevant time it was the contention on behalf of respondent no.1 and Ahmedabad Municipal Corporation that considering financial condition it

is not possible for the Corporation to make payment of arrears. However considering the fact that they are getting grant from the State Government to the extent of 80%, by interim order dated 15.07.1998, learned Single Judge of this Court passed the following order :

"Rule. To be heard with Special Civil Application No. 9949 of 1993.

Considering all the facts and circumstances of the case respondents Nos. 1 and 2 are directed to make payment of arrears and pension to the extent of burden of the State Government which is said to be 80%. The State Government is directed to release the amount to the extent of their liability. The State Government may comply with the orders of this Court within a period of 8 weeks from today. Respondent Nos. 1 and 2 shall comply with the directions of this Court within a period of two weeks thereafter."

By interim order it was directed to respondent Nos. 1 and 2 to make payment of arrears and pension to the extent of burden of the State Government which is said to be 80% and the State Government was also directed to release the amount to the extent of their liability. It is reported that pursuant to the said order 80% of the arrears and pension to the respective teachers have been paid. It is also further reported that so far as the balance

20% is concerned, now Ahmedabad Municipal Corporation has already made payment to the School Board - respondent No.1-herein and Mr.AD Oza, learned Advocate appearing on behalf of respondent no.1 has submitted that the said amount has been received by Municipal School Board on 18.04.2007 and the said amount will be paid to the respective retired teachers within a period of 10(ten) days from today. Respondents are directed to act accordingly. Therefore, the only question which is required to be considered by this Court is with regard to interest on delayed payment and interest from the date of their entitlement till actual payment.

3. Shri KB Pujara, learned Advocate appearing on behalf of the petitioners has heavily relied upon following unreported decision of this Court:

1. Sabarkantha Jilla Nivrutt Prathmik Shikshak Sangh v/s. D.D.O. in Special Civil Application No. 6589 of 1998 order dated 11.04.2006;
2. D.D.O. V/s. Sabarkantha Jilla Nivrut in Letters Patent Appeal No. 586 of 1996 - order dated 30.09.1999; and
3. Sabarkantha Jilla Nivrutt Prathmik Shikshan Sangh v/s. D.D.O. In Letters Patent Appeal No. 184 of 2002 in Special Civil Application No.11374 of 2000 - order dated 08.07.2002.

It is submitted by Shri Pujara that they are entitled to higher pay scale as per Government Resolution dated 05.07.1991 is not in dispute, therefore, the respondent Nos. 1 and 2 were supposed to revise the pay scale and fix the pension on the basis of Government Resolution dated 05.07.1991 and Government Resolution dated 16.08.1994. When the amount has been paid belatedly, the pensioners are entitled to interest on the said delayed payment. It is requested to award interest at the rate of 12% per annum. On the other hand Shri Nagarkar, learned Advocate appearing on behalf of the Corporation has submitted that interest at the rate of 12% may not be awarded considering rate of interest in the relevant years.

4. Heard the learned Advocates appearing on behalf of the respective parties.

5. At the outset it is required to be noted that entitlement to the respective pensioners - retired primary teachers of the Ahmedabad Municipal Board, benefit of higher pay scale in view of Government Resolution dated 05.09.1991 is not in dispute. Even otherwise it is not in dispute that all

the respective teachers have retired between 01.06.1987 to 31.07.1994. Therefore, as per the Government Resolution dated 16.08.1994 all those employees who have retired between 01.06.1987 to 31.07.1994, they are required to be given benefit of higher pay scale as per Government Resolution dated 05.07.1991. It is not in dispute that as per the policy and the Government Resolutions, primary teachers even in the School Board are entitled to all the benefits which are available to other Govt. employees like benefit of higher pay scale etc. Therefore, as such and as stated above entitlement with regard to benefit of higher pay scale there is no dispute. Still benefit of higher pay scale was not given and that pension was not accordingly fixed and the same has been paid belatedly for which there is no fault on the part of the retired teachers. Thus, they are entitled for interest on delayed payment. In a similar situation even with regard to the primary teachers of other district Panchayat where benefit of higher pay scale was not given and paid belatedly, this Court has awarded interest at the rate of 12 % from the date of entitlement till payment. Considering various orders passed by the Court referred to hereinabove, the petitioners -

primary teachers of the Municipal School Board who have retired between 01.06.1987 to 31.07.1994 are entitled to interest at the rate of 12% per annum from the date of their entitlement till actual payment.

6. In the facts and circumstances of the case, rate of interest entitled is to be considered as on 01.01.1995 for sake of convenience.

7. For the reasons stated above, the petition succeeds. The respondents more particularly respondent Nos.1 and/or 2 are directed to pay interest on the delayed payment of arrears and pension on the basis of Government Resolution dated 05.07.1991 at the rate of 12% per annum with effect from 01.01.1995 till actual payment. Considering the fact that some retired teachers are Senior citizens aged about more than 70 years, concerned respondents are directed to complete the calculation within a period of 2 (two) months from today and pay interest so calculated within a period of 1(one) month thereafter. This entire exercise to be completed within a period 3(three) months from today. Rule is made absolute to the aforesaid extent. In the

facts and circumstances of the case, the petitioners are entitled to the cost which is quantified at Rs.5,000/- (Rupees Five Thousand only) which Respondent Nos. 1 and 2 are directed to pay petitioner - Association within a period of two weeks from today.

[M.R.Shah, J.]

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